

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS C. TABORELLI,

Plaintiff,

v.

Case No. 03-74984

ROBERT RUSSELL, SCOTT ANSPACH,
THOMAS MATTHEWS, ANN
FLANAGAN, and ELENA SACLAYAN,
jointly and severally,

Honorable Patrick J. Duggan

Defendants.

ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan on August 11, 2006 .

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Presently before the Court is Plaintiff's motion for an extension of time to file his notice of appeal, pursuant to Fed. R. App. P. 4(a)(5). For the reasons set forth below, Plaintiff's motion shall be granted.

On December 22, 2003, Thomas Taborelli filed a pro se prisoner complaint against Defendants pursuant to 42 U.S.C. § 1983. In an Opinion and Order dated March 17, 2006, this Court granted summary judgment in favor of Defendants and dismissed Plaintiff's complaint.

On May 10, 2006, Taborelli filed a notice of appeal. The Sixth Circuit Court of Appeals entered an order directing Taborelli to show cause why his appeal should not be dismissed for failure to comply with Fed. R. App. P. 4(a), which provides that in a civil case, a notice of appeal must be filed within 30 days after the entry of judgment. Fed. R. App. P. 4(a)(1)(A). In his response to the Sixth Circuit's order to show case, Taborelli contends that the Court's March 17, 2006 Opinion and Order was mailed to the wrong prison.

Although Taborelli's notice of appeal was filed late, it was filed within the time for seeking an extension of time pursuant to Fed. R. App. P. 4(a)(5). On August 7, 2006, the Sixth Circuit Court of Appeals entered an Order remanding the case to this Court for the limited purpose of ruling on Plaintiff's request for an extension of time. Fed. R. App. P. 4(a)(5) provides that the district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

Fed. R. App. P. 4(a)(5).

In this case, Taborelli had until April 17, 2006 to file his appeal pursuant to Rule 4(a). However, Taborelli moved for an extension of time on May 10, 2006--within 30 days after his time to file an appeal expired. Moreover, the Court believes that Taborelli has shown excusable neglect for failing to file his appeal by April 17, 2006, where the decision was mailed to the wrong prison.

Accordingly,

IT IS ORDERED that Taborelli's motion for an extension of time to file his notice of appeal, pursuant to Fed. R. App. P. 4(a)(5) is **GRANTED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
Thomas C. Taborelli
154922
1576 W. Bluewater Highway
Ionia, MI 48846

Margaret A. Nelson, Esq.